

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04C-526T

IN THE MATTER OF AN INVESTIGATION OF EMERGING COMPETITIVE
TELECOMMUNICATIONS SERVICE PROVIDERS AND COMPETITIVE LOCAL
EXCHANGE CARRIERS CONCERNING ALLEGED VIOLATIONS OF COLORADO
REVISED STATUTES AND COMMISSION RULES OF PRACTICE AND PROCEDURE
RELATING TO THE FILING OF ANNUAL REPORTS BY PUBLIC UTILITIES.

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

Mailed Date: October 21, 2004
Adopted Date: October 14, 2004

I. BY THE COMMISSION

A. Statement and Findings of Fact

1. Those entities listed on Attachment A to this Order resell jurisdictional emerging competitive telecommunications services or provide competitive local exchange services to Colorado consumers. *See generally*, §§ 40-15-301 and 302, C.R.S.

2. The entities listed on Attachment A may purchase telecommunications services wholesale from the various facilities-based carriers listed on Attachment B to this Order that connect the Attachment A entities with the public switched network.

3. Providers of jurisdictional emerging competitive telecommunications services are required, pursuant to § 40-3-110, C.R.S., and 4 *Code of Colorado Regulations* (CCR) 723-1-25(a)(1), to file an annual report with the Colorado Public Utilities Commission on or before April 30 of each year for the preceding calendar year.

4. Accordingly, an annual report for the calendar year ending December 31, 2003 was to have been provided to the Commission by April 30, 2004. The companies listed on

Attachment A, as of the date of this order, have not submitted the required report to the Commission.

5. On August 4, 2004, at the request of Commission Director Bruce N. Smith, a letter was sent to each of the listed providers. The letter informed the providers that the Commission was considering initiating a show cause proceeding against the company for failing to file a 2003 annual report and gave the provider 30 days to comply with reporting requirements. Director Smith's letter followed Staff of the Public Utilities Commission's (Staff) letter dated June 10, 2004 reminding each of the providers of its obligation to file the required information with the Commission and the Colorado Department of Revenue.

6. Staff has reviewed its records and determined that as of October 14, 2004, a 2003 annual report has not been received from any of the providers listed on Attachment A.

B. Discussion

7. Section 40-3-110, C.R.S., provides in relevant part that:

Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information.

8. The Commission's Rules of Practice and Procedure provide in relevant part that:

Each entity operating in Colorado over which the Commission has jurisdiction except transportation utilities . . . shall file with the Commission, on or before April 30 of each year, an annual report for the preceding calendar year. The annual report shall be submitted on a prescribed form(s) and/or supplement(s) supplied by the Commission; shall be properly filled out; and shall be verified and signed by a proprietor, an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the entity submitting the report. If the entity is granted an extension of time to file its annual report, it is still required to provide to the Commission, on or before April 30, its total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year. The entity also shall file additional reports as required by the Commission. If the entity publishes an annual report or an annual statistical report to stockholders, other security holders or members, or receives an annual

certified public accountant's report of its business, the utility also shall file one copy of such reports with the Commission within 30 days after publication or receipt of such report.

4 CCR 723-1-25(a)(1).

9. The Commission finds that each of the entities listed on Attachment A may have failed to comply with the annual reporting requirements stated above. Accordingly, sufficient cause exists to hold a hearing to determine the facts of the matter, to hear material arguments, to receive evidence and testimony, and to determine what order or requirement, if any, shall be imposed by the Commission.

10. If the Commission determines that it is appropriate to do so, the Commission may issue a decision including but not limited to: (a) an order to cease and desist providing of emerging competitive telecommunications services; (b) an order that amends or revokes, wholly or in part, the provider's certificate of public convenience and necessity to provide emerging competitive telecommunications services; (c) an order that requires the underlying local exchange service providers to disconnect the company from the public switched network; (d) an order that contains a combination of the foregoing remedial actions; and/or (e) an order that requires any other corrective or remedial action which the Commission deems appropriate.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion each local exchange service provider listed on Attachment A shall appear before the Commission to show cause why the Commission should not take action and enter an order including, but not limited to, an order to cease and desist; an order that amends or revokes the provider's certificate of public convenience and necessity, including the revocation of applicable tariffs; an order that restricts the provider's ability to

connect with local exchange service providers; an order that contains a combination of the forgoing remedial actions; and/or an order that requires any other corrective or remedial action which the Commission deems appropriate.

2. Those entities listed on Attachment B, the underlying facilities based exchange providers, are joined as necessary parties. An Attachment B party may petition for dismissal from this docket if it is not an underlying provider for any entity listed on Attachment A.

3. Docket No. 04C-526T is set for hearing before an Administrative Law Judge:

DATE: December 7, 2004

TIME: 9:00 a.m.

PLACE: Colorado Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado

4. If the 2003 annual report is received in the name, address, and form required by the Commission prior to the hearing date, the Commission may dismiss that local exchange service provider from the proceeding.

5. The Staff of the Public Utilities Commission shall file, at least 30 days before hearing: (1) two copies of a list containing the name, address, and title of each of its witnesses; and (2) two copies of each of the exhibits which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

6. All entities listed on Attachment A shall file, at least 20 days before hearing: (1) two copies of a list containing the name, address, and title of each of its witnesses; and (2) two copies of each of the exhibits, which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

7. No witness shall be permitted to testify nor shall any document be received in evidence, except in rebuttal, unless filed and served as provided in this Order.

8. If Staff of the Public Utilities Commission or any Attachment A entity fail to meet the above requirements, the Commission may dismiss the proceeding or any defense, upon motion filed by any other party, unless good cause for non-filing is shown. No motion for continuance shall be granted if filed within 20 days before the first day of the hearing, except for good cause shown.

9. No exception to the procedure in the Order shall be made except upon timely motion showing good cause.

10. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 14, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners